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| 10/678,904      | 10/03/2003  | Robert G. Maier      | 34342               | 2335             |

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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/678,904

Applicant(s)

MAIER, ROBERT G.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/3/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the L-shaped slot must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claims 17, 20, 22 and 25 are objected to because a dependent claim cannot depend from itself. In order to further the prosecution of the application, the examiner has assumed that claim 17 depends from claim 16, claim 20 depends from claim 19, claim 22 depends from claim 21, and claim 25 depends from claim 24. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "an upper latch member disposed near the non-pivoting end of the window sash" on lines 3-4 of claim 1 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a latching system or the combination of a latching system and a window sash. The preamble of claim 1 implies the subcombination while the positive recitation of the window sash on lines 3-4 of claim 1 implies the combination. Recitations such as "a pivoting window" on line 1 of claim 2 render the claims indefinite because it is unclear if the applicant is referring to the pivoting window sash set forth above or is attempting to set forth another window in addition to the window sash set forth above. Recitations such as "said operating" on lines 4-5 of claim 2 and "said geared rack portion" on line 4 of claim 11 render the claims indefinite because they lack antecedent basis. Recitations such as "or" on line 2

of claim 5, line 6 of claim 6, and line 6 of claim 8 render the claims indefinite because it is unclear which one of the two non-equivalent alternatives the applicant is attempting to positively set forth. Recitations such as "said horizontal linking member has a toothed rack portion" on lines 1-2 of claim 11 render the claims indefinite because it is unclear how the activating member can comprise a rotating cam and operate with a toothed rack portion.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Guelck. Guelck discloses a latching system for a pivoting window sash 40 having a pivoting end and a non-pivoting end, said system comprising: an upper latch member

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56 disposed near the non-pivoting end of the window sash; an anti-bow latch member 50 disposed between the pivoting end of the window and said upper latch member; and an activating member 52 operationally connected to said upper latch member and said anti-bow latch member for operating both said upper latch member and said anti-bow latch member, an operating mechanism 56.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, 12, 13, 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guelck in view of Morse. Guelck discloses a latching system for a window 10 including a pivoting window sash 40 having a first side; a second side; and a pivoting end (not numbered, but shown in figure 4); and a window frame 20 having a first slide channel 21 and a second slide channel 21, said system comprising: a first upper latch member 56 disposed on the first side of the window for engaging the first slide channel; a second upper latch member 56 disposed on the second side of the window for engaging the second slide channel; a first anti-bow latch member 50 disposed on the first side of the window between said first upper latch member and said pivoting end for engaging the first slide channel; a second anti-bow latch member 50 disposed on the second side of the window between said second upper latch member

and said pivoting end for engaging the second slide channel; first and second vertical linking members 52 for operationally connecting with said first and second upper latch members, a rolling member/pivoting component 51.

Guelck is silent concerning an activating member disposed on the window.

However, Morse discloses a latching system for a window comprising an activating member 5, a first 7 and second 7' horizontal linking members for operationally connecting said activating member with first 4 and second 4' upper latch members, wherein actuating said activating member disengages said first and second upper latch members from the first slide channel, a second activating member 6 comprising a rotating cam.

It would have been obvious to one of ordinary skill in the art to provide Guelck with an activating member, as set forth by Morse, to increase the ease with which the latching system can be operated.

Claims 9, 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guelck in view of Morse, as applied to claims 1-6, 8, 12, 13, 16-26 above, and further in view of Kelley et al. Kelley et al. discloses upper latch members comprising spring loaded means 178 for extending a retractable cable 202, wherein the retractable cable 202 is flexible and disposed in an L-shaped slot (not numbered, but shown in figure 9) of the latch member 172.

It would have been obvious to one of ordinary skill in the art to provide Guelck with a spring loaded means and latch members, as taught by Kelley et al., to enable the upper latch members to automatically extend into the channels of the jambs.

***Allowable Subject Matter***

Claims 7, 11 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach the vertical linking member including a rotating gear, wherein the horizontal linking member has a toothed rack portion for engagement with the gear. See lines 1-3 of claim 7. The prior art of record also fails to teach the horizontal linking member having a toothed rack portion, and wherein vertical linking member includes: a gear shaft engaged with said geared rack portion; and a tooth lower member disposed in the sash stile, wherein said toothed lower member is engaged with said gear shaft and is connected to said anti-bow latch member. See lines 1-7 of claim 11. Finally, the prior art of record fails to teach a retractable cable connected to said anti-bow latch member; and at least one pulley disposed in the sash stile, and wherein said activating member includes a rotating cam, and further wherein said retractable cable is directed by said pulley and is connected to said rotating cam, and still further wherein said



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rotating cam contains a means for winding said retractable cable around said rotating cam, and even further wherein said operating mechanism includes a means for extending said retractable cable. See lines 3-11 of claim 15.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roberts, Randall, Cunningham et al., and Holly are cited for disclosing a window latching mechanism.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a stylized flourish extending from the end.

Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
September 29, 2006